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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In Re Bard IVC Filters Products
Liability Litigation

No. MD-15-02641-PHX-DGC

SHERR-UNA BOOKER, an individual,
Plaintiff,

v.

C.R. BARD, INC., a New Jersey
corporation and BARD PERIPHERAL
VASCULAR, an Arizona corporation,
Defendants.

**PLAINTIFF'S MOTION *IN LIMINE* #8
AND MEMORANDUM IN SUPPORT
TO EXCLUDE ANY REFERENCE TO
THE ADVERSE IMPACT OF A
PLAINTIFF'S VERDICT AND TORT
REFORM**

(The Honorable David G. Campbell)

(Oral Argument Requested)

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION *IN LIMINE* TO
EXCLUDE ANY REFERENCE TO THE ADVERSE IMPACT OF A
PLAINTIFF'S VERDICT AND TORT REFORM**

Plaintiff moves *in limine* for an Order precluding evidence and argument relating to
(1) the adverse impact of a plaintiff's verdict, and (2) Tort Reform or the perceived
"Litigation Crisis".

MEMORANDUM OF LAW

A. Reference To Adverse Impact Of A Plaintiff's Verdict

Bard must be precluded from arguing at trial that a verdict against it will have an
adverse impact on the medical community, impact future medical device research and/or

1 costs, research and development, and impact a juror's financial situation or ability to
 2 acquire medical care in the future. Such statements are clearly prejudicial and violate the
 3 long standing principle that a jury's verdict must be based solely on the legal evidence
 4 produced and entirely free from the taint of extraneous considerations and influences. Fed.
 5 R. Evid. 402, 403.

6 An adverse verdict in the instant case will not have any impact on Bard's capacity
 7 to continue doing business. It is speculative, at best, and a false statement, at worst, to
 8 argue that the medical community will be negatively impacted because Bard cannot
 9 absorb a verdict or that society will be affected by the publicity of a verdict. It is even
 10 more abstract for Bard to argue that a judgment for Plaintiff in this matter would
 11 indirectly harm public health, create a public health crisis, or that the cost of medical care
 12 for a juror would increase. Such arguments are political in nature, likely to cause undue
 13 prejudice, and must be excluded pursuant to Federal Rules of Evidence 401, 402 and 403.

14 **B. Reference To Tort Reform Or The "Litigation Crisis"**

15 Tort Reform, perceived "Litigation Crisis" or lawyer-driven lawsuits have no
 16 relevance to the present case. The only plausible reason for Bard to mention these issues
 17 would be in an effort to inflame the passion of the jury. The probative value is non-
 18 existent as these politically charged and unfounded statements would result in severe
 19 prejudice to Plaintiff and ultimately mislead jurors from the facts of the case. Plaintiff
 20 respectfully requests that these statements be excluded from trial pursuant to Federal
 21 Rules of Evidence 401, 402 and 403.

22 RESPECTFULLY SUBMITTED this 26th day of January, 2018.

23 GALLAGHER & KENNEDY, P.A

24 By: /s/ Mark S. O'Connor
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2018, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/ Gay Mennuti